IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5472 of 1995

Date of Decision: 15.12.2005

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DALSUKHBHAI SOMABHAI PANCHAL - Appellant(s)
Versus
LAXMANSINH PARATAPSINH & 3 - Respondent(s)

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting? No

For the Appellant(s):
MRS VASAVDATTA BHATT for Appellants,Adv.

For Respondent(s):
MR PV NANAVATI for Respondent-3, Adv.
MR SHASHIKANT S GADE for Respondent-4,Adv.

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal arises out of the Judgment dated 17.10.1994 passed by Motor Accident

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Whether reporters of Local Papers may be allowed to see the Judgment? Yes

Claims Tribunal (Aux.), Mehsana, MACP No.332 of 1986.

2. Briefly narrated, accident took place on 13.6.1984. Minor Sanjay (8) was travelling by Luxury Bus No.GRS-3855, insured with National Insurance Company Limited, along with his family members. It hit Truck No.GTF-3469 insured with United India Insurance Company on Highway to Ambaji. As a result of this accident, deceased died instantaneously. Allegation is that accident took place due to rash and negligent driving of Luxury bus.

3. Opponents filed reply denying the allegations. Ultimately, after recording of evidence and hearing the parties, Award to the extent of Rs.62,500/- is passed against the claim of Rs.4,00,000/- carrying interest at

the rate of 12% from the date of application till payment.

4. Against this Award, present Appeal is filed seeking enhancement of compensation. Record perused, learned counsel for the parties heard. Sole question advanced for consideration pertains to assessment of compensation. Smt.Vasavdatta Bhatt, learned counsel for the appellants, seeks enhancement of compensation submitting that Claims Tribunal assessed compensation erroneously, as a result, just compensation has not been awarded. Learned counsel for the appellant seeks enhancement of compensation taking guidance from the Second Schedule to Section 163-A, Motor Vehicles Act, 1988.

Shri Shashikant Gade, learned counsel

appearing for National Insurance Company Limited, submits that looking to the age of deceased, proper compensation has been awarded.

Shri P.V.Nanavati, learned counsel for the United India Insurance Company, submits that the truck did not commit accident, therefore, it has been rightly exonerated. Consequently, United India Insurance Company is not liable to pay compensation.

5. After perusal of evidence, we find that Claims Tribunal has rightly concluded that accident was caused by Luxury Bus. Driver of bus ought to have been vigilant in driving it safely and on correct side of the road leaving space for the other vehicles to pass. Having failed to follow this norm, accident has taken

place, life of a young boy has been taken away. Finding with regard to involvement of luxury bus is justified, therefore confirmed.

6. With regard to assessment of compensation, it should be assessed on notional income of non earning member, Rs.15,000/-, making deduction of 1/3rd to his personal expenditure. Accordingly, annual income would be Rs.10,000/- x 15 = Rs.1,50,000/=. Question now arises whether there should be 2/3rd deduction from this amount on the ground that after some years, deceased would have separate family resulting in lower dependency for the parents. We do not allow 2/3rd deduction because the deceased in this case is 8 year old, application of multiplier would take the dependency to 23 years. It is not necessary that he would have married at this age. At the

most, it is a border line case, therefore, 2/3rd deduction is not justified. Therefore, to the amount of Rs.1,50,000/-, there would be addition of Rs.20,000/- for pain and suffering, and Rs.3,000/- for funeral expenses. Consequently, Appeal is allowed, Award is modified. Claimants are held entitled to compensation of Rs.1,73,000/-, enhancement of Rs.1,10,500/-. Enhanced compensation will carry interest at the rate of 12% from the date of application till payment. Award amount be deposited with Claims Tribunal within two months by National Insurance Company Limited, Mehsana, thereafter paid to the claimants. No costs.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)